



# House of Representatives

General Assembly

**File No. 204**

February Session, 2008

House Bill No. 5025

*House of Representatives, March 26, 2008*

The Committee on General Law reported through REP. STONE of the 9th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## **AN ACT AMENDING THE CHILD PROTECTION SAFETY ACT.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 21a-337 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2008*):

3 The following acts and the causing thereof are prohibited: (1) The  
4 introduction or delivery for introduction into commerce of any  
5 misbranded hazardous substance or banned hazardous substance; (2)  
6 the alteration, mutilation, destruction, obliteration or removal of the  
7 whole or any part of the label of, or the doing of any other act with  
8 respect to, a hazardous substance if such act is done while the  
9 substance is in commerce, or while the substance is held for sale,  
10 whether or not the first sale, after shipment in commerce, and results  
11 in the hazardous substance being a misbranded hazardous substance  
12 or a banned hazardous substance; (3) the receipt in commerce of any  
13 misbranded hazardous substance or banned hazardous substance and  
14 the delivery or proffered delivery thereof for pay or otherwise; (4) the  
15 giving of a guarantee or undertaking referred to in subdivision (2) of

16 subsection (b) of section 21a-338 which guarantee or undertaking is  
17 false, except by a person who relied upon a guarantee or undertaking  
18 to the same effect signed by, and containing the name and address of,  
19 the person residing in the United States from whom he received in  
20 good faith the hazardous substance; (5) the failure to permit entry or  
21 inspection as authorized by subsection (a) of section 21a-343 or to  
22 permit access to and copying of any record as authorized by section  
23 21a-344; (6) the introduction or delivery for introduction into  
24 commerce, or the receipt in commerce and subsequent delivery or  
25 proffered delivery for pay or otherwise, of a hazardous substance in a  
26 reused food, drug or cosmetic container or in a container which,  
27 though not a reused container, is identifiable as a food, drug or  
28 cosmetic container by its labeling or by other identification. The reuse  
29 of a food, drug or cosmetic container as a container for a hazardous  
30 substance shall be deemed to be an act which results in the hazardous  
31 substance being a misbranded hazardous substance. As used in this  
32 subdivision, the terms "food", "drug" and "cosmetic" shall have the  
33 same meanings as in the Connecticut Food, Drug and Cosmetic Act; (7)  
34 the use by any person to his own advantage, or revealing other than to  
35 the administrator or officers or employees of the agency, or to the  
36 courts when relevant in any judicial proceeding under sections 21a-335  
37 to 21a-346, inclusive, of any information acquired under authority of  
38 section 21a-343 concerning any method of process which as a trade  
39 secret is entitled to protection; (8) the introduction or delivery for  
40 introduction into commerce of any item containing asbestos which  
41 reasonably may be expected to be used in the construction or repair of  
42 structures, without clearly indicating by labeling thereon that the item  
43 contains asbestos and that asbestos may cause cancer when inhaled, or  
44 the introduction or delivery for introduction into commerce of any toy  
45 or other article for sale in this state marketed for the use of children  
46 under the age of sixteen containing asbestos; (9) the alteration or  
47 removal of any item upon which the commissioner or his authorized  
48 agent has placed an embargo prior to the time the commissioner, such  
49 agent or a court permits the alteration or removal of such item; (10) the  
50 introduction or delivery for introduction into commerce, after

51 December 31, 1992, of any toy or other article for sale in this state and  
52 marketed for the use of children between the ages of three and seven,  
53 or determined to be for the use of children between the ages of three  
54 and seven by the federal Consumer Product Safety Commission  
55 pursuant to 16 CFR Part 1500 et seq., as published in the Code of  
56 Federal Regulations Revised to January 1, 1991, and as from time to  
57 time amended, or the Commissioner of Consumer Protection pursuant  
58 to sections 21a-335 to 21a-346, inclusive, which would be classified as a  
59 banned hazardous substance under 16 CFR Part 1501.4(b)(1) of said  
60 code and does not bear a conspicuous warning label that clearly and  
61 specifically communicates that the contents include small parts which  
62 pose a hazard for children under the age of three, except that any toy  
63 or other article that contains, as of December 31, 1992, a safety warning  
64 label in substantial compliance with the requirements of this  
65 subdivision shall be determined by the commissioner to be in  
66 compliance with this subdivision until October 1, 1993. As used in this  
67 subdivision, "conspicuous" has the same meaning and characteristics  
68 regarding type size as in 16 CFR Part 1500.121(c)(2) of said code; and  
69 (11) the introduction or delivery for introduction into commerce, or the  
70 distribution or sale, of a drying oil or drying oil product, manufactured  
71 after December 31, 1994, which does not bear a conspicuous warning  
72 label on a side or back panel of such product stating: "DANGER -  
73 RAGS, STEEL WOOL OR WASTE SOAKED WITH .... (INSERT  
74 PRODUCT NAME) MAY SPONTANEOUSLY CATCH FIRE IF  
75 IMPROPERLY DISCARDED. IMMEDIATELY AFTER USE, PLACE  
76 RAGS, STEEL WOOL OR WASTE IN A SEALED WATER-FILLED  
77 METAL CONTAINER." As used in this subdivision, "conspicuous" has  
78 the same meaning and characteristics regarding type size as in 16 CFR  
79 Part 1500.121 (c)(2) of said code.

80 Sec. 2. Section 21a-338 of the general statutes is repealed and the  
81 following is substituted in lieu thereof (*Effective October 1, 2008*):

82 (a) Any person who violates any of the provisions of section 21a-337  
83 shall be guilty of a class [C] B misdemeanor but an offense committed  
84 with intent to defraud or mislead, or a second or subsequent offense,

85 shall be an unclassified misdemeanor for which the penalty shall be  
86 imprisonment for not more than one year, or a fine of not more than  
87 [three] five thousand dollars or both such imprisonment and fine.

88 (b) No person shall be subject to the penalties of subsection (a) of  
89 this section, (1) for having violated subdivision (3) of section 21a-337,  
90 as amended by this act, if the receipt, delivery or proffered delivery of  
91 the hazardous substance was made in good faith, unless [he] such  
92 person refuses to furnish, on request of an officer or employee duly  
93 designated by the administrator, the name and address of the [person]  
94 individual or entity from whom [he] such person purchased or  
95 received such hazardous substance, and copies of all documents, if any  
96 there be, pertaining to the delivery of the hazardous substance to [him]  
97 such person; or (2) for having violated subdivision (1) of said section  
98 21a-337, if [he] such person establishes a guarantee or undertaking  
99 signed by, and containing the name and address of, the person  
100 residing in the United States from whom [he] such person received in  
101 good faith the hazardous substance, to the effect that the hazardous  
102 substance is not a misbranded hazardous substance or a banned  
103 hazardous substance within the meaning of those terms in sections  
104 21a-335 to 21a-346, inclusive.

105 Sec. 3. Section 21a-340 of the general statutes is repealed and the  
106 following is substituted in lieu thereof (*Effective October 1, 2008*):

107 (a) Whenever a duly authorized agent of the administrator finds or  
108 has probable cause to believe that any hazardous household substance  
109 is misbranded, or is a banned hazardous substance, within the  
110 meaning of sections 21a-335 to 21a-346, inclusive, [he] such agent shall  
111 affix to such article a tag or other appropriate marking, giving notice  
112 that such article is, or is suspected of being, misbranded or is a banned  
113 hazardous substance and has been detained or embargoed, and  
114 warning all persons not to remove or dispose of such article by sale or  
115 otherwise until permission for removal or disposal is given by such  
116 agent or the court. No person shall remove or dispose of such detained  
117 or embargoed article by sale or otherwise without such permission.

118 The administrator may, after notice and hearing, impose a civil penalty  
119 of not more than five hundred dollars for each separate offense on any  
120 person who removes, without such permission, any tag or other  
121 appropriate marking affixed to any article which has been detained or  
122 embargoed in accordance with the provisions of this subsection. Such  
123 penalty shall be deposited into the consumer protection enforcement  
124 account established pursuant to section 21a-8a.

125 (b) When an article detained or embargoed under subsection (a) has  
126 been found by such agent to be misbranded or a banned hazardous  
127 substance, [he] such agent shall petition the superior court in whose  
128 jurisdiction the article is detained or embargoed or any judge thereof  
129 for a libel of condemnation of such article. When such agent has found  
130 that an article so detained or embargoed is not misbranded or a  
131 banned hazardous substance, [he] such agent shall remove the tag or  
132 other marking.

133 (c) If the court finds that a detained or embargoed article is  
134 misbranded or a banned hazardous substance, such article shall, after  
135 entry of the decree, be destroyed at the expense of the claimant thereof,  
136 under supervision of such agent, and all court costs and fees, and  
137 storage and other proper expenses, shall be taxed against the claimant  
138 of such article or his agent; except that, if the misbranding can be  
139 corrected by proper labeling of the article, the court, after entry of the  
140 decree and after such costs, fees and expenses have been paid and a  
141 good and sufficient bond, conditioned that such article shall be so  
142 labeled, has been executed, may by order direct that such article be  
143 delivered to the claimant thereof for such labeling under the  
144 supervision of an agent of the administrator. The expense of such  
145 supervision shall be paid by the claimant. The article shall be returned  
146 to the claimant on the representation to the court by the administrator  
147 that the article is no longer in violation of sections 21a-335 to 21a-346,  
148 inclusive, and that the expenses of such supervision have been paid.

149 Sec. 4. (NEW) (*Effective October 1, 2008*) In addition to the criminal  
150 penalties and remedies set forth in chapter 420d of the general statutes,

151 the administrator may, after notice and hearing pursuant to chapter 54  
152 of the general statutes, levy a civil penalty of not more than one  
153 hundred dollars for a violation of any of the provisions of this chapter,  
154 except for section 21a-340 of the general statutes. Each such violation  
155 of this chapter shall be a separate and distinct offense and each day's  
156 continuance thereof shall be deemed to be a separate and distinct  
157 offense. Such penalty shall be deposited into the consumer protection  
158 enforcement account established pursuant to section 21a-8a of the  
159 general statutes.

160 Sec. 5. Section 21a-343 of the general statutes is repealed and the  
161 following is substituted in lieu thereof (*Effective October 1, 2008*):

162 (a) For the purposes of enforcement of sections 21a-335 to 21a-346,  
163 inclusive, officers or employees duly designated by the administrator,  
164 upon presenting appropriate credentials to the owner, operator or  
165 agent in charge, are authorized (1) to enter, at reasonable times, any  
166 factory, warehouse or establishment in which hazardous substances  
167 are manufactured, processed, packed or held for introduction into  
168 commerce or are held after such introduction, or to enter any vehicle  
169 being used to transport or hold such hazardous substances in  
170 commerce; (2) to inspect, at reasonable times and within reasonable  
171 limits and in a reasonable manner, such factory, warehouse,  
172 establishment or vehicle, and all pertinent equipment, finished and  
173 unfinished materials, and labeling therein; and (3) to obtain samples of  
174 such materials or packages thereof, or of such labeling.

175 (b) If the officer or employee obtains any sample, prior to leaving  
176 the premises, [he] such officer or employee shall pay or offer to pay the  
177 owner, operator or agent in charge for such sample and give a receipt  
178 describing the samples obtained.

179 (c) Each violation of subsection (a) of this section shall be deemed an  
180 unfair or deceptive trade practice pursuant to section 42-110b.

181 Sec. 6. Section 21a-345 of the general statutes is amended by adding  
182 subsection (c) as follows (*Effective October 1, 2008*):

183 (NEW) (c) The administrator may require that retail stores post a  
184 notice making the general public aware of the administrator's decision  
185 that an article has been designated a banned hazardous substance,  
186 pursuant to regulations adopted under section 21a-336. Such notices  
187 shall be posted in a location visible to the general public and shall be  
188 posted for a duration of a time specified by the administrator.  
189 Violations of this subsection shall be deemed an unfair or deceptive  
190 trade practice pursuant to section 42-110b.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2008</i>	21a-337
Sec. 2	<i>October 1, 2008</i>	21a-338
Sec. 3	<i>October 1, 2008</i>	21a-340
Sec. 4	<i>October 1, 2008</i>	New section
Sec. 5	<i>October 1, 2008</i>	21a-343
Sec. 6	<i>October 1, 2008</i>	21a-345

**KID**      *Joint Favorable C/R*

GL

**GL**      *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

### **OFA Fiscal Note**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Judicial Dept.	GF -Potential Revenue Gain	Minimal	Minimal
Judicial Dept. (Probation) Dept of Corrections	GF - Cost	Minimal	Minimal
Consumer Protection, Dept.	GF -Potential Revenue Gain	Minimal	Minimal

Note: GF=General Fund

**Municipal Impact:** None

#### **Explanation**

The bill enhances criminal penalties (fines and terms of imprisonment) that may be imposed on any person who uses hazardous substances in consumer products, including toys. There were no cases under these statutes during the last six fiscal years.

To the extent that the bill's changes increase the likelihood that offenders would be prosecuted or receive harsher penalties, a potential revenue gain from criminal fines and potential cost for incarceration and/or probation supervision in the community exist. It is anticipated that relatively few fines would be imposed on an annual basis, and, consequently, any revenue gain under the bill is expected to be minimal. On average, it costs the state \$3,736 to supervise an offender on probation in the community as compared to \$44,165 to incarcerate the offender.

The bill also results in a potential General Fund revenue gain through additional Connecticut Unfair Trade Practices Act violations.

#### **The Out Years**

The annualized cost identified above would continue into the future



subject to inflation; the annualized revenue gain from criminal fines would remain relatively stable since fine amounts are set by statute.

**OLR Bill Analysis****HB 5025*****AN ACT AMENDING THE CHILD PROTECTION SAFETY ACT.*****SUMMARY:**

This bill expands the State Child Protection Safety Act by prohibiting the sale of asbestos-containing toys or other items marketed for children under age 16. It also:

1. increases the act's criminal and civil penalties;
2. requires stores to post notices when the Department of Consumer Protection (DCP) designates an article as a banned hazardous substance, making failure to do so an unfair trade practice; and
3. makes it an unfair trade practice for DCP inspectors or investigators to enter premises or vehicles (a) without displaying appropriate credentials or (b) at unreasonable times.

The latter change appears to conflict with another provision of the Connecticut Unfair Trade Practices Act which exempts actions taken by state regulatory officials (CGS § 42-110c).

EFFECTIVE DATE: October 1, 2008

**§§ 2-4 — CHILD PROTECTION SAFETY ACT PENALTIES**

The State Child Protection Safety Act governs the use of hazardous substances in consumer products, including toys, and generally bans them. Currently, violations are either (1) class C misdemeanors, punishable by imprisonment for up to three months, fines of up to \$500, or both or (2) for repeat offenses or those committed with the intent to defraud or mislead, unclassified misdemeanors punishable by imprisonment for up to one year, fines of up to \$3,000, or both.

Under the bill, the former become class B misdemeanors, punishable by imprisonment for up to six months, fines of up to \$1,000, or both. And the maximum fine for the unclassified misdemeanor offense increases to \$5,000.

The bill also authorizes the DCP commissioner to levy a civil penalty of up to \$100 for each day a violation continues, except for violations that involve removing or disposing of tags affixed to embargoed items. The law already authorizes DCP to levy civil penalties of up to \$500 per item for that type of violation.

The bill requires the department to give alleged violators notice and a hearing and directs that these penalties be deposited into DCP's consumer protection enforcement account. It also requires that fines for tagging violations be deposited in that account.

## **§ 6 — POSTING NOTICES**

The bill authorizes the DCP commissioner to require retail stores to post notices informing the general public when DCP adopts a regulation designating an article as a banned hazardous substance. Notices must be posted in a location visible to the general public and remain up for the period of time the department specifies.

Failure to follow the bill's posting requirement is a Connecticut Unfair Trade Practices Act (CUTPA) violation. CUTPA generally allows the DCP commissioner to investigate complaints, issue cease and desist orders, order restitution, enter into consent agreements, and ask the attorney general to initiate legal proceedings. It also allows individuals to file civil lawsuits. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for restraining order violations.

## **COMMITTEE ACTION**

Select Committee on Children

Joint Favorable Change of Reference

Yea 8 Nay 0 (03/05/2008)

General Law Committee

Joint Favorable

Yea 18 Nay 0 (03/11/2008)